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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 132

RAFAEL SANCHO BONET, TREASURER,
PETITIONER,

vs.

THE TEXAS COMPANY (P. R.), INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 22, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1937.

No. 3380.

THE TEXAS COMPANY (P.R.) Inc.,

PLAINTIFF, APPELLANT,

v.

RAFAEL SANCHO BONET, Treasurer,

DEFENDANT, APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO,
FROM JUDGMENT, FEBRUARY 11, 1938.

TRANSCRIPT OF RECORD.

JAMES R. BEVERLEY,
ROUNDS, DILLINGHAM, MEAD & NEAGLE,
for Appellant.

WILLIAM CATTRON RIGBY,
for Appellee.

BOSTON:
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1938

TABLE OF CONTENTS.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1937.

No. 3380.

THE TEXAS COMPANY (P. R.) INC.,
PLAINTIFF, APPELLANT,
v.
RAFAEL SANCHO BONET, TREASURER,
DEFENDANT, APPELLEE.

TRANSCRIPT OF RECORD.

[FILED IN CIRCUIT COURT OF APPEALS AUGUST 24, 1938.]

IN THE DISTRICT COURT OF SAN JUAN, PUERTO RICO.

CIVIL CASE NO. 26,252.

THE TEXAS COMPANY (P. R.), INC., PLAINTIFF,
v.
RAFAEL SANCHO BONET, TREASURER OF PUERTO RICO, DEFENDANT.

INJUNCTION.

BILL OF INJUNCTION.

Now comes plaintiff by her [*sic*] attorneys subscribing this bill and respectfully shows:

1. That plaintiff is a corporation organized under the laws of this Island with principal offices in this city, engaged in the wholesale business of buying and selling products derived from petroleum, in which business it employs, and actually employed during the dates to which this bill refers, besides its office personnel, various laborers, all of which were insured under the laws in regard to workmen's compensation in force at the dates later referred herein.

2. That defendant is the Treasurer of Puerto Rico, duly appointed and confirmed, and having taken his oath of office, being now sued in his official character as such.

3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921 (p. 491), that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premium, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926.

4. That on February 12, 1926, Rodulfo Suarez, Isidro Villoch and Isidro Perez, laborers employed by plaintiff, died as a result of an accident incident to their work which occurred while they were working together with other laborers, as employees of plaintiff, in a concrete platform by the side of a warehouse and wharf belonging to plaintiff in the harbor of Guayanilla, Puerto Rico, the usual employment of deceased being to help in the embarkment and disembarkment of gasoline drums, the filling of same, placing them in order, and cleaning the warehouse and platform, receiving from plaintiff for said work daily wages fluctuating from $1.50 to $1.75. Said accident occurred in the following manner: About 8 o'clock in the morning of said day, as deceased were cleaning the said platform from earth and stones that had fallen upon it by the side of a natural wall formed by earth, the upper part of said wall land-slided causing said workmen injuries of such a nature that they were retrieved dead.

5. That the Workmen's Relief Commission investigated said accident and after holding public hearings in the three cases, on April 24, 1928, arbitrarily and illegally handed down orders declaring that plaintiff was not an insured employer, although it was a matter of record in the said Commission that plaintiff was insured, having

complied with all the requisites of the law as above alleged and having paid the premium corresponding to the year within which said accident occurred; and by said orders awarded compensations of $2,000 to the dependents of each of the deceased and ordained its administrative secretary to prepare the corresponding liquidations and to send to the Attorney General of Puerto Rico a copy of each one of the orders so that said officer proceed, under Section 7 of the law then in force (Act No. 102 of 1925), to collect from plaintiff payment of the resulting amounts.

6. That the liquidations made by the administrative secretary of the Commission were as follows:

Case of Rodulfo Suarez.

Compensation for death	$2,000.00
Administrative expenses, 12 percent	240.00
Total	$2,240.00
Less advances made by the employer	45.33
Total	$2,194.67

Case of Isidro Villoch.

Compensation for death	$2,000.00
Administrative expenses, 12 percent	240.00
Total	$2,240.00

Case of Isidro Perez.

Compensation for death	$2,000.00
Administrative expenses, 12 percent	240.00
Total	$2,240.00

7. That on June 2, 1928, plaintiff filed in this Honorable Court three classical certioraris numbered 6986, 6987 and 6988, which were dismissed by judgments entered on July 23, 1928, because of lack of jurisdiction, remanding the cases to the Workmen's Relief Commission, therein to continue their course as provided by law, said judgments having been affirmed for the same reason by the Honorable Supreme Court of Puerto Rico by judgments entered on January 23, 1930, that were not appealed to the Circuit Court of Boston.

8. That between the dates of April 24, 1928 and September 14,

1936, the Workmen's Relief Commission, nor its successor, the Industrial Commission of Puerto Rico, nor the Attorney General of Puerto Rico, made any attempt to collect the compensations awarded by the above referred orders, and no legal action has been started to collect same under Section 7 of the Workmen's Accident Compensation Act No. 102 of 1925.

9. That on September 14, 1936, the present Industrial Commission of Puerto Rico handed down an order in the case of Rodulfo Suarez requesting defendant, Treasurer of Puerto Rico, to levy an attachment upon properties of plaintiff to collect thus the compensation awarded to the beneficiaries of said laborer plus the expenses had, making a total according to the liquidation, of $2,194.67; and the defendant, Treasurer of Puerto Rico, after requesting plaintiff to pay and threatening with summarily attaching her property, on October 27, 1936, attached summarily a truck belonging to plaintiff which is indispensable to plaintiff in the conduction and delivery of gasoline sold; and said defendant notified further to plaintiff that if on November 6, 1936, plaintiff did not pay said amount plus $1 costs, the attachment levied would be executed, selling at public sale the property attached; defendant intending said execution, which will cause plaintiff grave injury and irreparable damages, unless this Honorable Court grants plaintiff a restraining order and the injunction prayed for in this bill, it being the intention of the Industrial Commission and of the defendant, Treasurer of Puerto Rico, to follow an identical course in the collection of the other two compensations, unless this court enjoins the collection in the way herein prayed for.

10. That the request made by the Industrial Commission to the Treasurer of Puerto Rico by its order of September 14, 1936 as well as the acts of the defendant, Treasurer of Puerto Rico, in trying to collect the aforesaid compensations by a summary administrative attachment as before described, is illegal, arbitrary and abusive for the following reasons:

(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and

from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925.

(b) Because even admitting for the sake of argument that said orders were legal and valid, according to their very text and to Section 7 of Act No. 102 of 1925, the procedure to be followed to collect a compensation awarded by reason of an accident to a workman of an uninsured employer, is to report the order to the Attorney General of Puerto Rico for "institution of proper action, in a court of competent jurisdiction against said employer to recover the aforesaid sum"; the Industrial Commission of Puerto Rico and the Attorney General of Puerto Rico being obliged to follow said procedure, as clearly ordained by the present Workmen's Compensation Law, Act No. 45, passed April 18, 1935, Section 34, of which reads as follows:

> "Section 34. The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

(c) Because Section 36 of Act No. 85 of 1928, under which the defendant, Treasurer of Puerto Rico, intends to find justification for his acts, is applicable exclusively to workmen's accidents occurring after the passage of said law and while the same was in force; and said law has been expressly repealed by Act No. 45 of 1935, and especially by Section 34 of said law as above transcribed.

(d) Because in accordance with Section 13 of Act No. 102 of 1925, which was in force at the time of the occurrence of the aforementioned accident, in case plaintiff should have given false reports to the Commission in the statement it filed on July 15, 1925,—which we emphatically deny—the only recourse of

the Commission would have been to bring a criminal action against plaintiff and hold it responsible for three times the difference between the premium paid and the premium it should have paid.

(e) Because the orders of the Workmen's Relief Commission of April 24, 1928, are in the nature of final judgments, and in accordance with the Code of Civil Procedure of Puerto Rico no judgment can be executed five years after it has become final, which term has expired with excess in these three cases; and the Workmen's Relief Commission and its successor have been negligent (laches) in bringing proceedings to collect the compensations awarded by the same.

11. Plaintiff alleges that there not existing an adequate remedy at law, and the treasurer not intending to collect a tax herein, the remedy of payment under protest is not available, and if this Honorable Court does not enjoin by injunction the collection by distraint as intended by the defendant and allows him to sell in public sale the attached property of plaintiff and other property that he might attach in the collection of the other two compensations, plaintiff will suffer irreparable damages, will be deprived of its property without due process of law and will be obliged to pay compensations it does not have, and never had to pay under any law.

Wherefore, to this Honorable Court plaintiff respectfully prays that in due course a judgment be handed down sustaining this bill of injunction and decreeing a permanent injunction enjoining the treasurer himself or by his agents, employees or inferior officers from depriving plaintiff of its possession of the attached property; from taking, transferring or intervening in any form whatsoever with said property; from advertising for sale and selling in public sale the said attached property; from attaching any other property of plaintiff in collecting the said compensations; from collecting from plaintiff the said compensations awarded by orders of April 24, 1928 to the beneficiaries of Rodulfo Suarez, Isidro Villoch and Isidro Perez, and granting plaintiff any other remedy that might be proper to protect its rights against the illegal acts of the defendant, charging him with the costs, expenses and legal fees of lawyers of plaintiff.

Plaintiff further prays that during the pendency of this suit, this court decree a preliminary injunction to the same effects, after plaintiff files the corresponding bond to guarantee defendant, Treasurer of Puerto Rico, of all the damages that he might suffer in case that plaintiff be not entitled to the injunction prayed for.

Plaintiff further prays that pending the resolution as to the preliminary injunction, this Honorable Court decree a restraining order enjoining defendant, Treasurer of Puerto Rico, himself, or by his agents, employees or inferior officers from depriving plaintiff of the possession of the attached property; or from intervening in any form whatsoever with said property, or from advertising the sale or from selling at public sale the same; or from attaching any other property of plaintiff in collecting the compensations and administrative expenses awarded by the Workmen's Relief Commission by orders of April 24, 1928 to the beneficiaries of the deceased workmen Rodulfo Suarez, Isidro Villoch and Isidro Perez.

San Juan, Puerto Rico, November 5, 1936.

R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
by R. CASTRO FERNANDEZ,
Attorneys for Plaintiff.

OATH.

Gus Marbe, under oath deposes and says: that he is the general manager of plaintiff; that he has read the foregoing petition; that the facts alleged are true having knowledge of them by information that he deems correct; except the facts alleged in regard to the attachment levied, of which he has personal knowledge.

GUS MARBE.

Sworn to and subscribed before me by Mr. Gus Marbe, of age, married, merchant and a resident of this city, to me personally known in San Juan, Puerto Rico, today, November 5, 1936.

JOSE LOPEZ BARALT,
Notary Public.

Affidavit No. 368.
Filed in the Clerk's office, today, November 5, 1936.

[Same Title:]

WRIT OF PRELIMINARY INJUNCTION.

ORDER.

Defendant was duly notified of the restraining order and to show cause given by this court on November 6, 1936, in which he was requested to appear before this court on November 13, 1936, at 9 A. M. to show cause why the preliminary injunction should not be granted as prayed for by plaintiff in this case. It appears from the service of the writ given that this was notified to defendant together with a copy of the bill on proper time.

At the hearing plaintiff was the only party present. Defendant did not appear, although he was duly notified. Plaintiff prayed the court to issue the preliminary injunction based on the sworn bill inasmuch as defendant had not appeared to show cause why the same should not be decreed.

And the court now, having studied the sworn bill of injunction and being of the opinion that the same contains a good and sufficient cause of action against defendant, does hereby grant to petitioner the preliminary injunction prayed for, and in its consequence enjoins the Treasurer of Puerto Rico *pendente lite* and until something different be ordered by this court, *per se*, or by means of his agents, employees and inferior officers, from depriving petitioner of the possession of the attached property, or from intervening in any form whatsoever with said property, or from advertising for sale or selling in public sale the same, or from attaching any other property of plaintiff in collecting the compensations and administrative expenses awarded by the Workmen's Relief Commission by orders of April 24, 1928, to the beneficiaries of the deceased workmen Rodulfo Suarez, Isidro Villoch and Isidro Perez.

And the court now grants defendant a term of ten days in which to answer the bill of injunction, with notice that if he does not do so, plaintiff will be at liberty to enter his default and thereby obtain a permanent writ of injunction, if entitled to it.

The clerk will issue the corresponding writ as soon as plaintiff files and this court approves a bond in the sum of $1,000 to guarantee

the Treasurer of Puerto Rico of the damages that this preliminary injunction might cause him if it be decided finally that plaintiff is not entitled to same.

San Juan, Puerto Rico, November 17, 1936.

C. LLAUGER DIAZ.

[Same Title.]

DEMURRER.

Now appears defendant, Rafael Sancho Bonet, Treasurer of Puerto Rico, represented by his attorneys, the Attorney General of Puerto Rico and the Assistant Attorney General, and against the bill of injunction herein, files the following demurrer:

That the bill does not contain sufficient facts to constitute a cause of action.

Wherefore defendant respectfully prays from this court to dismiss the bill of injunction.

San Juan, Puerto Rico, December 7, 1936.

B. FERNANDEZ GARCIA,
Attorney General.

EMILIO DE ALDREY,
Assistant Attorney General.

Served with copy, this seventh day of December, 1936.

JOSE LOPEZ BARALT,
Attorney for Plaintiff.

[Same Title.]

ORDER.

In this case a bill of injunction was filed and an order to show cause was entered, defendant did not appear, and then the court decreed the preliminary injunction under the corresponding bond. Defendant then filed a demurrer alleging that the bill does not contain sufficient facts to constitute a cause of action. On December 14 of this year both parties appeared and submitted the demurrer, and the court now, after studying the bill of injunction filed, that had

already been object of a detailed study by the court, dismisses the demurrer and grants defendant a term of ten days in which to answer the bill of injunction.

Let this order be notified.

Given in San Juan, Puerto Rico, this twenty-third day of December, 1936.

C. LLAUGER DIAZ, *Judge.*

The parties served with copy this twenty-third day of December, 1936. J. FIGUEROA, *Clerk.*

[Same Title.]

MOTION OF RECONSIDERATION OF ORDER.

Now comes defendant in the above-entitled case represented by the Attorney General of Puerto Rico and the Assistant Attorney General and to this Honorable Court respectfully shows and prays:

1. That on December 23, 1936 this Honorable Court entered an order in this case dismissing the demurrer filed by defendant to the bill of injunction.

2. That said demurrer was passed upon by this court without defendant having filed the memorandum that at the hearing of said demurrer he promised, and that, as will be remembered by the Honorable Judge intervening in this case, C. Llauger Diaz, on December 14 of this year the parties appeared at the hearing of said demurrer and submitted the same by briefs, defendant having a term of ten days since December 14 to file his brief.

3. That on the day the demurrer was dismissed, defendant was working on his brief, which he had not filed because the term for filing same had not expired.

4. That defendant prays for a reconsideration of the order given for the reasons contained in the brief accompanying this motion and which is now made a part of same.

Wherefore defendant respectfully prays this Honorable Court to reconsider its order of December 23, 1936, handing down in its stead

an order sustaining the demurrer and dismissing the bill of injunction.

San Juan, Puerto Rico, December 31, 1936.

B. FERNANDEZ GARCIA,
Attorney General.

EMILIO ALDREY,
Assistant Attorney General.

[Same Title.]

ORDER.

Considering the motion for rehearing filed by defendant in this case because we dismissed the demurrer without giving him an opportunity to file a memorandum which he promised, even though from the minutes of the court it appears that the demurrer was submitted, the court, wishing to give all the parties an opportunity to substantiate their contentions as amply as possible, decides to leave without effect, its order of December 23, 1936, dismissing the demurrer and granting defendant a term of ten days in which to answer the bill of injunction, and hereby now so decrees. Said order is set aside in its entirety and the case remains in the same status it had before said order.

Let this order be notified.

Given in San Juan, Puerto Rico, this eighth day of January, 1937.

C. LLAUGER DIAZ, *Judge.*

The parties served with copy this eleventh day of January, 1937.

J. FIGUEROA, *Clerk.*

[Same Title.]

ORDER.

After considering the briefs filed by the parties on the demurrer of defendant stating that the bill does not contain sufficient facts to constitute a cause of action, the court dismisses the demurrer and

grants defendant a term of ten days in which to answer the bill of injunction.

Let this order be notified.

Given in San Juan, Puerto Rico, this 24th day of February, 1937.

C. LLAUGER DIAZ, *Judge.*

The parties served with copy this twenty-fourth day of February, 1937. J. FIGUEROA.

[Same Title.]

STIPULATION OF FACTS AND SUBMITTAL OF THE CASE.

To the Honorable Court:

Now come the parties to this suit, by their respective counsel, and state that they have agreed to file in this court the stipulation that follows, so that the case may be taken as submitted by the same:

A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.

B. The facts alleged in the bill thus confessed, the parties submit to the court the present case under the following propositions of law, the determination of which they both understand decides this case:

1. Defendant maintains that the Supreme Court of Puerto Rico having decided against plaintiff the certiorari cases Nos. 6986, 6987 and 6988 to which reference is made in paragraph 7 of the bill, the injunction now prayed for does not lie.

2. Defendant further maintains that plaintiff not having taken recourse of the remedy provided for by Section 9 of Act No. 102 of 1925 to review the orders of the Workmen's Relief Commission, the writ of injunction does not now lie.

3. Defendant further maintains that the orders of the Workmen's Relief Commission of April 24, 1928 described in the bill do not have the nature of final judgments under the dispositions of the Code of Civil Procedure in force, providing that a final judgment will not be executed five years after having become final, for which reason the statute of limitation has not run against the right to execute said orders, an injunction, therefore, not lying to enjoin their execution.

4. Defendant further maintains that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in Section 25 of Act No. 85 of 1928, and not, as maintained by plaintiff, that specified by Section 7 of Act No. 102 of 1925.

C. Plaintiff maintains the negative of all the propositions as maintained by defendant, as above expounded.

And in order to save time and efforts, the parties now ask the court to consider the present case as tried and submitted by this stipulation, without a previous setting of same in the general calendar.

San Juan, Puerto Rico, April 10, 1937.

R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
Attorneys for Plaintiff.

B. FERNANDEZ GARCIA,
Attorney General of Puerto Rico.

EMILIO DE ALDREY,
Assistant Attorney General.

[Same Title.]

ORDER.

In this case Judge Llauger on November 17 of last year issued a writ of preliminary injunction. In December the same judge dismissed a demurrer based on lack of a cause of action in the bill of injunction. Now a stipulation of facts has been presented to this judge submitting the case on its merits, in which stipulation all of the ultimate facts of the bill are confessed, which is tant amount to a reproduction of the demurrer already passed upon by Judge Llauger.

Under those circumstances it is proper that Judge Llauger, and not the judge subscribing this order, be the one to issue the order of final judgment in this case, and to that effect, and with the previous

consent of said judge, we now pass to him the record of the case for said purpose.

Let this order be notified.

Given at chambers, San Juan, Puerto Rico, May 21, 1937.

A. R. DE JESUS, *Judge*.

Parties served with copy this twenty-first day of May, 1937.

J. FIGUEROA, *Clerk*.

[Same Title.]

FACTS, OPINION AND JUDGMENT OF DISTRICT COURT, SAN JUAN, P. R.

The bill of injunction substantially alleges: the capacity of the parties; that on or before July 15, 1925, plaintiff under Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921, page 490, filed with the Workmen's Relief Commission a report containing all the requisites called for by said section, and the Treasurer of Puerto Rico imposed, taxed and collected from plaintiff the corresponding premium; on February 12, 1926, three of plaintiff's workmen, named Rodulfo Suarez, Isidro Villoch and Isidro Perez, died as a consequence of an accident while in their work in the municipality of Guayanilla, and the Commission, after holding the corresponding public hearings, on April 24, 1928 entered an order in each one of the cases declaring plaintiff an uninsured employer and awarding compensations of $2,000 to the dependents of each one of the deceased, further providing that a copy of the order be sent to the Attorney General of Puerto Rico so that in accordance with the provisions of Section 7 of Act No. 102 of 1925, said officer proceed to collect the amounts awarded; that on June 2, 1928, plaintiff filed three writs of certiorari before this court which were dismissed because of lack of jurisdiction, the Supreme Court of Puerto Rico having upheld this court (40 P. R. R. 456). Between April, 1928 and September, 1936, neither the Industrial Commission nor the Attorney General, nor any other Government Bureau has made any efforts to collect the compensations awarded until September 14, 1936, when the present Industrial Commission of Puerto

Rico issued an order in the case of Rodulfo Suarez requesting defendant as Treasurer of Puerto Rico to attach property of plaintiff to collect the compensation awarded to the beneficiaries of the workman, and the treasurer, after requesting payment from plaintiff, summarily attached a tank truck which it uses and is indispensable for the transportation of gasoline, and he notified plaintiff further that he would execute said attachment selling in public sale the attached truck, something which would cause grave damages to plaintiff. Plaintiff alleges that the request made by the Industrial Commission as well as the acts of the treasurer in trying to collect the said compensation are illegal, arbitrary and abusive for the following reasons:

(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925.

(b) Because even admitting that said order was legal and valid, then the procedure to be followed under Section 7 of Act No. 102 of 1925, was to report the order to the Attorney General of Puerto Rico for him to bring the corresponding action against the employer to collect the sum awarded.

(c) Because Section 36 of Act No. 85 of 1928 applies exclusively to accidents consequential to the employment occurring after the approval of the law,

(d) Because in accordance with Section 13 of Act No. 102 of 1925, which was in force at the time of the occurrence of the accident, the recourse of the Commission was to bring criminal action against plaintiff and hold it responsible, in accordance with the law, in the manner and form therein specified.

(e) Because the orders of the Workmen's Relief Commission of April 24, 1928, are in the nature of final judgments, and in accordance with the Code of Civil Procedure; plaintiff alleging further that it has no remedy at law, as the remedy of payment under protest is not available, and if the treasurer be not enjoined

from collecting by distraint on plaintiff's property, which he intends to do, irreparable damages would be caused plaintiff.

We granted a restraining order and to show cause, and after the usual incidents in cases of this nature, the parties have filed a motion that they entitled "Stipulation of Facts and Submittal of the Case" in which they say as follows:

[MEMORANDUM. Stipulation of facts and submittal of the case already printed at page 12, is here omitted. A. I. CHARRON, *Clerk*.]

We have already seen the ultimate facts alleged in the bill, and it is now proper to pass upon the questions propounded. The writs of certiorari brought by plaintiff against the Workmen's Relief Commission were decided by us under the theory that such remedy did not lie against the Workmen's Relief Commission. This view was upheld by the Supreme Court. *Vide* 40 P. R. R. 456. But this does not mean at all that, because the certiorari did not lie, plaintiff cannot impeach the proceeding followed by the treasurer to collect the compensations awarded, if that proceeding is not in accordance with the law or is oppressive or confiscatory for plaintiff. Act No. 102 of 1925 provides in Section 9 that the employer or the workman can take an appeal to the District Court following the procedure ordained by the Code of Civil Procedure. Such appeal is limited, according to the law, to those "cases of permanent partial disability, permanent total disability or death". This, in regard to the workman. In regard to the employer, the appeal from any order of the Commission is limited to those cases where the "decision is to the effect that the accident is one for which compensation is granted under this act". We doubt very much whether plaintiff could have taken an appeal for the purpose determined by the law because of the nature of the accident described by plaintiff in her bill and which has been confessed expressly by the defendant. Therefore, we are of the opinion that the employer under Section 9 of the Act of 1925 could not have taken an appeal.

Now, the question as to whether in this appeal plaintiff could have raised the incidental question as to whether she was or was not

insured, as insinuated by the Supreme Court in deciding the certiorari case referred to above, is not to be decided by us in this case, although we are convinced that plaintiff necessarily should have had means to protect her interests, inasmuch as the certiorari was not proper and it is not decided that in an appeal it could have raised the incidental question as to the insurance. If the orders of the Workmen's Relief Commission have or have not the nature of final judgments under the dispositions of the Code of Civil Procedure in force, is discussed by defendant in a brief previously filed, wherein the following view is taken: The Code of Civil Procedure, Section 243, provides that in all cases, except those for collection of money, compliance with the judgment can be obtained after a term of five years counted from the date in which authorization of the court or judgment in additional proceedings be registered. As this section refers exclusively to judgments handed down by courts, it cannot be applied in any form whatsoever to orders of the Workmen's Relief Commission, because if it is true that the latter has *quasi* judicial functions that were delegated to it by the Legislature of Puerto Rico, this does not mean in any sense that it is a court of justice and that its decisions are judgments within the juridical definition of that word; and moreover because we are not dealing here with a claim against private parties but with an action or claim by the state against an employer, and the state is not included in the dispositions of Section 243 of the Code of Civil Procedure. Defendant cites in support of his theory 36 *Cyc. 1171* and *Union Central Life* v. *Gromer,* 20 P. R. R. 80. Once we understand the nature of the action brought in this case, it will be easy to discover the fallacy of defendant's arguments. This is not an action for the benefit of the People of Puerto Rico nor for any branch, agency or dependency of same, but is an action against private parties, to wit: the beneficiaries acknowledged as such by the orders of the Workmen's Relief Commission and the plaintiff, which are both private entities. If the compensation was in the nature of a tax according to the law, it is clear that the procedure determined by the law should have been strictly complied with. There is no doubt that in an action brought by the Attorney General to collect the

compensations awarded, defendant could have raised this question which would then have been passed upon.

Another point in the stipulation of facts is that the right to execute the orders has prescribed in accordance with divers dispositions of the law. Under Act No. 102 of 1925, Section 7, when an accident occurred to an employee working for an uninsured employer, the Workmen's Relief Commission was to determine the proper compensation plus the expenses, and was so to communicate to the Attorney General, who was then to bring an action in a court of competent jurisdiction for the collection of the amount awarded. As the accident occurred, according to the stipulation of facts, on February 12, 1936, the compensation awarded to the dependents of the deceased workmen were subject to the procedure ordained by the section of the law just mentioned. Later, in 1928 (Act No. 85, page 630), the Workmen's Accident Compensation Law was amended and a different procedure was ordained by Section 25 of the Law, which provided that the Industrial Commission was to notify the Treasurer of Puerto Rico of the compensation awarded, and the latter was to impose and collect the compensation and expenses, these constituting a lien upon the property of the employer. Still later, the law was again amended in 1935 (Act No. 45 of that year, Section 15), maintaining the same provision of the Act of 1928, but providing that the compensation and expenses were preferential liens as against any other charge or lien, or taxes, whatsoever their concept, excepting refactionary credits and mortgages. There is no doubt, therefore, that in accordance with this last disposition of the law the treasurer can attach and sell property as in the case of any other tax, but the question to be decided in this case is the following: The accident having occurred in 1926 and the compensations having been awarded under the law then in force, can the procedure provided in the 1935 Act be applied to that compensation? When the Act of 1928 was amended, it was expressly stated by Section 48 of Act 85, *supra*, that the dispositions of this later law would not affect in any form whatsoever the pending cases involving compensations to workmen under previous laws. The Act of 1935, Section 34, also states that the provisions of this Act shall in no way affect pending liti-

gations or claims, and that the procedure to be followed in such litigation or claims shall be in accordance with the laws in force on the date of the accident. Plaintiff maintains that insomuch as that section of the law is procedural in nature, the law now in force should be applied, *i. e.*, Act No. 85 of 1928, which authorizes the attachment and sale of the property of the employer. To this defendant answers that, if it be so, all the dispositions of the law in regard to procedure should have retroactive effect and then Section 25 of the 1928 law would not apply, but Section 15 of the Act of 1935. We do not see how this can help the theory of defendant.

It is true that plaintiff chose the wrong way in bringing the certiorari, and that in an appeal, then granted by the law, it could have raised incidentally the question of the validity of the premium [*sic*] awarded. Now, if the Workmen's Relief Commission has been negligent or lax in making effective its order imposing a tax [*sic*] this should not prejudice the State fund nor the beneficiaries of the workman.

Be it as it may, we do not think that the injunction is the proper remedy to enjoin the collection of the compensations awarded inasmuch as that would mean the enjoining of the enforcement of a public statute for the public welfare by officers of the law. If the statute of limitations has or has not run against the action is something we cannot decide in this special proceeding. We think that the final or permanent injunction prayed for should not be granted, and give judgment accordingly.

JUDGMENT.

For the reasons expressed in the above description of facts and opinion, that are hereby made a part of this judgment, the court decides this case dismissing the bill of injunction, with costs to plaintiff, without including in them the legal fees of defendant's counsel.

Let this be notified.

Given in San Juan, P. R., this twenty-second day of July, 1937.

C. LLAUGER DIAZ, *Judge.*

Attest: JUAN FIGUEROA, *Clerk.*

[Same Title.]

MOTION FOR RECONSIDERATION OF JUDGMENT.

To the Honorable CARLOS LLAUGER DIAZ, *Judge:*

Now comes plaintiff by her [*sic*] attorney and respectfully alleges as reasons why the reconsideration of the judgment in this case should be granted:

1. That defendant in the stipulation of facts filed to avoid the production of evidence confessed all the ultimate facts of the bill of injunction. (*Vide* the "Stipulation of Facts and Submittal of the Case", paragraph A.)

2. That accordingly the conclusion must be reached, with the consent of defendant, that the orders of the Workmen's Relief Commission which are the basis of contention in this case, are null and void insofar as the same declare plaintiff an uninsured employer, as it was alleged in the bill of injunction (third paragraph) that plaintiff filed at the proper time with said Commission a report in duplicate under oath stating the number of its employees, the nature of their occupation and the total payroll of the previous fiscal year, the treasurer having assessed and collected from plaintiff the corresponding premium; facts which, in accordance with the law then in force (Act of 1925) were the requisites, compliance with which insured an employer.

3. That the orders of the Workmen's Relief Commission declaring plaintiff to be an uninsured employer and charging it with payment of the compensations described in the bill of injunction, being illegal, it is proper that the Treasurer of Puerto Rico be enjoined by injunction from collecting the referred compensations from plaintiff under authority of said orders.

4. That this Honorable Court, in its opinion deciding this case, admits that, the certiorari filed to review said orders of the Commission having been dismissed, this does not import that "plaintiff cannot impeach the proceeding followed by the treasurer to collect the compensations awarded, if that proceeding is not in accordance with the law or is oppressive or confiscatory for plaintiff".

5. That this Honorable Court, in its opinion deciding this case,

admits that from the impeached orders "we are of the opinion that the employer under Section 9 of the Act of 1925 could not have taken an appeal".

6. That if plaintiff could not take an appeal from said orders, and if the writs of certiorari to review the same were dismissed, and if this court is of the opinion that plaintiff should have an open way to impeach the procedure followed by the treasurer if this is not in accordance with law (*ante* paragraph 4), the remedy of injunction is the only one had by plaintiff to enjoin collection of said compensations, and in this proceeding, impeach the legality of the said orders and of the procedure that the treasurer is intending to follow to make the collection, which is, as known by this court, a summary one, without opportunity to plaintiff to be heard, and by notice, attachment and public sale of its property.

7. That this Honorable Court, in its opinion deciding this case suggests, although does not decide, that the orders of the Workmen's Relief Commission are in the nature of final judgments, and if that be true, as we maintain, according to Section 243 of the Code of Civil Procedure, execution of a judgment after five years of the issuance and registration of same, cannot be had, and the orders now impeached were issued and registered more than five years ago.

8. That the defendant, Treasurer of Puerto Rico, is attempting to collect from plaintiff the referred compensations by a summary procedure (distraint) having already attached plaintiff's property threatening with selling same to collect said obligations, and this procedure as followed by defendant is not authorized by any statute, for which reason defendant is acting illegally and without any statutory authority, and hence the injunction prayed for, lies.

9. Because the accidents occurred and the claims originated in the year 1926, and the law then in force (Act of 1925) provided in Section 7:

> "In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the

aforesaid sum; *Provided however*, That the commission shall grant the employer as well as the laborer in the case an opportunity to be heard and to defend themselves, and shall conform, as far as possible, to the practices observed by the courts of justice."

And in accordance with the law now in force (Act of 1935), Section 34, and under the title "Pending Litigation Unaffected", the claims will be conducted by the law in force at the time of the occurrence of the accident:

"The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

10. That the procedure to be followed in the prosecution of these claims being the one in force at the time of the occurrence of the accidents, and the said law (Act of 1925, Section 7) providing that the procedure to be followed is a plenary action by the Attorney General against plaintiff, a writ of injunction lies to enjoin the defendant, Treasurer of Puerto Rico, who, in open disobedience of the law and without any statutory authority is intending to collect summarily, in a way not provided by law.

11. That even accepting for the sake of argument that the procedure to be followed in the collection of these compensations is that provided by the law now in force (Act of 1935), this law does not authorize the treasurer in any form to attach and publicly sell in distraint proceeding the properties of plaintiff to satisfy the compensations. The relevant section of the Act of 1935, Section 15, states:

"In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both

of which shall constitute a lien on all the property of the employer; *Provided,* That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses;"

12. That the summary procedure of attachment and public sale, without a hearing to plaintiff and without giving it an opportunity to defend itself in regard to the legality of the orders awarding the compensations—orders which even defendant admits are illegal—is an illegal procedure, not authorized by any applicable statute, and it is a universal doctrine that

"Authority to sell land for taxes being exclusively statutory, such authority can be exercised only in the precise cases specified in the law, and it has been held that an act granting this authority will not apply to taxes already delinquent unless such act is expressly made retroactive, nor can the power be exercised after the end of the period of time limited by law for that purpose." 61 C. J. 1115, and authorities cited.

"The power to sell land for delinquent taxes, in a collector of taxes, is a naked power conferred by statute and can only be validly evercised in conformity with the statute . . ." 61 C. J. 1116.

"Tax sales are made exclusively under statutory power." *Simpson* v. *Reiman,* 140 Ark. 417.

13. That if it be permitted to the Treasurer of Puerto Rico against the law, to sell summarily plaintiff's properties which he had attached in collection of the said illegal compensation, plaintiff would lack any other remedy except an injunction to avoid the taking away of its property without due process of law, inasmuch as it would not have an opportunity to raise the question of the legality of the said orders.

14. That this Honorable Court, in its opinion deciding this case, agrees with plaintiff that "If the compensation was in the nature of a

tax according to the law, it is clear that the procedure determined by the law should have been strictly complied with", and if the injunction is not issued, the treasurer will be suffered to disregard the procedure ordained by the law and which he should follow *"strictissimi juris"*.

15. That the reason given by this Honorable Court to deny the injunction, to wit, that it is not proper to enjoin the collection of the compensations awarded because that would amount to enjoin the enforcement of a public statute for the general welfare by officers of the law, is not sufficient because:

(a) The Treasurer of Puerto Rico is not enforcing a public statute, but on the contrary, is acting beyond all statutory authority when he attempts to collect from plaintiff by distraint proceeding not provided for by law, it being the duty of the Attorney General, under the applicable law, to bring an ordinary action against plaintiff to collect the compensations.

(b) The Treasurer of Puerto Rico is not acting for the benefit of the public in this case, but for the particular benefit of the beneficiaries of the compensations awarded, and this court, in its opinion deciding this case, has said:

"Once we understand the nature of the action brought in this case, it will be easy to discover the fallacy of defendant's argument. This is not an action for the benefit of The People of Puerto Rico nor for any branch, agency or dependency of same, but is an action against private parties, to wit: the beneficiaries acknowledged as such by the Order of the Workmen's Relief Commission and the plaintiff, which are both private parties."

Wherefore with all due respect it is now prayed that the court reconsider its opinion and judgment of July, 1937, it being prayed further that, while this court considers the present motion, an order be entered setting aside the judgment handed down until this motion is decided.

San Juan, P. R., July 24, 1937.

R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
Attorneys for Plaintiff.

[Same Title.]

ORDER.

Considering the petition for rehearing of the judgment submitted by plaintiff, after studying again the opinion and judgment, we believe that the reconsideration prayed for should be, and hereby is, denied.

Let this be notified.

Given in San Juan, P. R., this third day of September, 1937.

C. LLAUGER DIAZ, *Judge.*

The parties notified with copy this seventh day of September, 1937.

J. FIGUEROA, *Clerk.*

[Same Title.]

PETITION FOR APPEAL TO SUPREME COURT OF PUERTO RICO.

To the Clerk of the Court and to the Attorney General of Puerto Rico as Counsel for Defendant:

Gentlemen: Please be notified that plaintiff, not being satisfied with the judgment entered in this case on July 22, 1937, and with the order of September 3, 1937, denying the motion for reconsideration of the judgment filed by plaintiff, hereby appeals from same to the Honorable Supreme Court of Puerto Rico. Of which we notify you in accordance with law.

San Juan, P. R., September 14, 1937.

JAMES R. BEVERLEY,
R. CASTRO FERNANDEZ,
Attorneys for Plaintiff.

Notified with copy this fourteenth day of September, 1937.

B. FERNANDEZ GARCIA,
Attorney General,
EMILIO DE ALDREY,
Assistant Attorney General,
Attorneys for Defendant.

No. 7603.

The Texas Company (P. R.) Inc., Plaintiff and Appellant,

v.

Rafael Sancho Bonet, Treasurer of Puerto Rico,
Defendant and Appellee.

Appeal from Judgment of the San Juan District Court.

INJUNCTION.

OPINION OF THE COURT

DELIVERED BY MR. CHIEF JUSTICE DEL TORO.

San Juan, P. R., February 11, 1938.

This case deals with a bill of injunction dismissed by the District Court.

In said bill, plaintiff, a corporation, substantially alleged that it was an insured employer since July 15, 1925, in which date and in accordance with the Workmen's Accident Compensation Act as amended by Act No. 61 of 1921, it filed with the Workmen's Relief Commission the corresponding statement, the Treasurer of Puerto Rico having assessed and collected the tax [*sic*] covering until July 15, 1926;

That on February 12, 1926, plaintiff's workmen Rodulfo Suarez, Isidro Villoch and Isidro Perez died as a consequence of certain accident while they were working, which the Commission investigated, declaring said Commission on April 24, 1928 that plaintiff was not an insured employer notwithstanding that its records showed to the contrary, awarding compensations of $2,000 to the dependents of each one of the deceased and ordaining its administrative secretary to prepare the corresponding liquidations sending them to the Attorney General for him to obtain from plaintiff payment of the same in accordance with Section 7 of Act No. 102 of 1925 then in force;

That on July 2, 1928 plaintiff filed in the same District Court three writs of classical certiorari that were dismissed by the court because of lack of jurisdiction by judgments of July 23, 1928 wherein the records of the cases were remanded to the Commission, there to

continue their course as provided by law, said judgments having been affirmed by this Supreme Court. 40 P. R. R. 456.

That between April 24, 1928 and September 14, 1936 the Commission nor its successor, the Industrial Commission, nor the Attorney General made any attempt to collect the compensations;

That on September 14, 1936 the Industrial Commission issued an order requesting the defendant, Treasurer of Puerto Rico, to levy an attachment in the case of the deceased Rodulfo Suarez on properties of plaintiff in order to collect the compensation and the treasurer after requesting plaintiff on October 27, 1936 attached a tank truck belonging to it, the use of which is indispensable in its business of selling and delivering gasoline, and further notified that if on November 6. 1936 plaintiff did not pay the compensations plus $1 costs, he would sell at public sale the attached property, something which would cause plaintiff great injuries and irreparable damages, it being the intention of the Industrial Commission and of the treasurer to follow an identical course in the collection of the other compensations; and

That the request made by the Industrial Commission to the treasurer as well as the acts of the latter are illegal and abusive for the following reasons:

(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925.

(b) Because even admitting for the sake of argument that said orders were legal and valid, according to their very text and to Section 7 of Act No. 102 of 1925, the procedure to be followed to collect a compensation awarded by reason of an accident to a workman of an uninsured employer, is to report the order to the Attorney General of Puerto Rico for "institution of proper action, in a court of competent jurisdiction against said employer to recover the aforesaid sum" the Industrial Com-

mission of Puerto Rico and the Attorney General of Puerto Rico being obliged to follow said procedure, as clearly ordained by the present Workmen's Compensations Law, Act No. 45, passed April 18, 1935, Section 34 of which reads as follows:

"Section 34. The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

(c) Because Section 36 of Act No. 85 of 1928, under which the defendant, Treasurer of Puerto Rico, intends to find justification for his acts, is applicable exclusively to workmen's accidents occurring after the passage of said law and while the same was in force; and said law has been expressl repealed by Act No. 45 of 1935, and especially by Section 34 of said law as above transcribed.

(d) Because in accordance with Section 13 of Act No. 102 of 1925, which was in force at the time of the occurrence of the aforementioned accident, in case plaintiff should have given false reports to the Commission in the statement it filed on July 15, 1925,—which we emphatically deny—the only recourse of the Commission would have been to bring a criminal action against plaintiff and hold it responsible for three times the difference between the premium paid and the premium it should have paid.

(e) Because the orders of the Workmen's Relief Commission of April 24, 1928, are in the nature of final judgments, and in accordance with the Code of Civil Procedure of Puerto Rico no judgment can be executed five years after it has become final, which term has expired with excess in these three cases; and the Workmen's Relief Commission and its successor have been negligent (laches) in bringing proceedings to collect the compensations awarded by the same.

Plaintiff alleged finally that there not being an adequate remedy at law inasmuch as the treasurer was not intending to collect a tax, the remedy of payment under protest was not available, an injunction being the proper remedy, praying the court to issue it accordingly.

After the case followed the course provided by law, it was finally submitted to the consideration and decision of the court on the following stipulation:

[MEMORANDUM. This stipulation already printed at page 12, is here omitted. A. I. CHARRON, *Clerk*.]

By judgment of July 22, 1937 the court dismissed the bill. The last paragraph of the opinion in which the judgment was based, states:

"Be it as it may, we do not think that the injunction is the proper remedy to enjoin the collection of the compensations awarded inasmuch as that would mean the enjoining of the enforcement of a public statute for the public welfare by officers of the law. If the statute of limitations has or has not run against the action is something we cannot decide in this special proceeding. We think that the final or permanent injunction prayed for should not be granted, and give judgment accordingly."

Plaintiff asked for a reconsideration of the judgment and the court denied it. An appeal was then taken to this court.

Two errors are assigned in the brief. The first one maintains that the court erred in dismissing the bill. The second that the court erred in basing its judgment on the reasoning contained in the paragraph of its opinion already transcribed above.

As plaintiff repeatedly insists in its brief that defendant confessed its status as insured employer as well as the illegality of the orders of the Commission, the execution of which it prays first to be enjoined and then set aside by virtue of the injunction, it is proper to state that this is denied by defendant in its brief as follows:

". . . in our case plaintiff has never proved that it does not owe the amount whose payment is demanded, and to the contrary, there exists an official order of the Workmen's Relief Commission to the effect that this employer, because of its non-

insured status should pay the compensation awarded to the injured workmen.

"Plaintiff further alleges that inasmuch as by the stipulation of facts filed before the court below the ultimate facts of the bill were confessed, it should be accordingly understood that defendant admitted that the orders of the Workmen's Relief Commission of April 24th, 1928 were issued against the express wording of the law, and were therefore null and void. Letter A of said stipulation reads as follows:

'Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law it might contain.'

"It is undisputable that what was admitted by defendant by said stipulation were the facts which occurred and which gave origin to all this proceeding since its inception. The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively.

"As it can be easily determined from the contents of the stipulation in question, the only conclusion which can be reached is that the parties wanted to argue and submit to the inferior court questions of law, to be limited to the following:" (Same as in stipulation.)

Although the first paragraph of the stipulation is not as clear and concrete as it should have been, the same is in our opinion susceptible of the interpretation put to it by defendant, an interpretation which makes defendant consistent with the position he assumed before the District Court and before this Supreme Court.

This point thus clarified, we find an order issued by the Workmen's Relief Commission on April 24th, 1928 awarding compensation to the dependents of the deceased workmen, which was to be paid by plaintiff because, as declared by the Commission, it was not an insured employer.

What did plaintiff do when it learned of this? It went to the District Court of San Juan asking for a writ of certiorari to nullify the order. The court dismissed the writ because it did not lie and plaintiff appealed to this court which, through Mr. Justice Wolfe, decided the appeal as follows:

"This is an appeal from the judgment of the District Court of San Juan, annulling a writ of certiorari. The petitioner there complained of the action of the Workmen's Relief Commission in treating petitioner, The Texas Company, as if it were an insured employer whereas petitioner alleged that the records of the Workmen's Relief Commission failed to show it was such an uninsured employer and on the contrary showed that the said Texas Company was in fact insured. The Commission awarded compensation to a working man. The petitioner appellant did not complain in the court below nor in this court of the award made by the Commission, but its recourse to the courts was based exclusively on its contention that it was an insured employer. The result of treating petitioner as an uninsured employer would subject it under section 20 of the Workmen's Accident Compensation Act, Laws of 1925, page 942, to a special procedure at the instance of the Attorney General and perhaps to additional expenses. The petition alleged that the action of the Workmen's Relief Commission was entirely null and void and that the said commission was entirely without jurisdiction to make the said award. Relief was prayed under section 28 of the said Act as amended or under the general law of certiorari. . . .

"Appellant does not contend at all that it has a remedy by certiorari under any act affecting workmen's relief. Its claim arises by a process of exclusion. Assuming no special writ of certiorari under the Workmen's Accident Compensation Act, petitioner says it could not appeal because it was not attacking the award; that the Workmen's Relief Commission is a quasi-judicial body whose decisions should be reviewable by certiorari when no appeal lies.

"Section 1 of the statute governing the general right of certiorari is as follows: (Copied.)

"It is evident, as held by the court below, that this writ applies only to review the actions of courts.

"The appellant invokes the inherent powers of courts, but where the legislature has expressed itself as under the general

certiorari act, we find thereunder no justification for the review of actions of boards created by the said legislature. . . .

"Furthermore the appellant does not convince us that an appeal to review the decision complained of did not lie under section 9 of the Act of 1925, laws of that year, page 930. It provides:

'Section 9. Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act.'

"A general appeal, it would seem, could raise the incidental question.

"In any event if the board was without jurisdiction then the petitioner ought to have had other means of protecting itself that we need not suggest.

"We find nothing in the laws of Porto Rico to authorize the certiorari solicited and the judgment will be affirmed."

No other recourse was taken by plaintiff and the order remained standing, no effort being necessary to conclude that after the years passed, plaintiff is not in a position to do now by injunction what in due time it could have done by the means placed at its disposal by the law.

Plaintiff insists that in accordance with the law now in force the most that could have been done would have been to send the case to the Attorney General for him to file the corresponding suit in which it could have a right to allege and prove that it was not to pay the compensation, being an insured employer. Plaintiff calls attention to Section 34 of Act No. 45 of April 18, 1935 on the premises, which states:

"The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or

claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

Appellant's contention does not lack force at first inquiry, but if we study the final disposition of the section, "and the workmen shall be entitled to such sum of money as may be prescribed by said laws", it will be seen that the purpose of the law was no other, as maintained by defendant, than to save the rights of the workmen in respect to the compensation, it not being the intention to contradict the well settled rule to the effect that procedural statutes are immediately applicable.

"It is a principle of Spanish Law, recognized by the jurisprudence of the highest courts of the Union", was said by this court in *American Railroad Company of Porto Rico* v. *Hernandez*, 8 P. R. R. 492, "that the laws governing jurisdiction and procedure are matters of public interest and have a retroactive effect, that is to say, they are not considered as of a retroactive character in such a sense that they are included in the provisions of article 3 of the Civil Code".

And as it is said in 59 Corpus Juris 1173, summing up the cases, "the general rule that statutes will be construed to be prospective only and not retrospective or retroactive ordinarily does not apply to statutes affecting remedy or procedure, or, as is otherwise stated, such general rule is subject to an exception in the case of a statute relating to remedies or procedure".

Furthermore, the law refers to "pending litigations or claims" and ordains that "the procedure followed in such litigations or claims until their termination shall be . . ." and this case was terminated by the order of April 24, 1928, the execution of which is now intended.

The fact that Act No. 45 of 1935 be the one applicable and not Act No. 85 of 1928, is of no consequence, because according to them both, the collection by the treasurer is allowed as in case of a tax.

We do not think that plaintiff is either right when it maintains that the order of the Commission of April 24, 1928, being in the nature of a judgment ordering the payment of money, more than five years having elapsed since it became final, its execution is not permitted in

accordance with Section 243 of the Code of Civil Procedure which prescribes:

> "In all cases other than for the recovery of money, the judgment may be enforced or carried into execution after the lapse of five years from the date of its entry, by leave of the court, upon motion, or by judgment for that purpose, founded upon supplemental proceedings."

This rule of law was decreed for application to judgments handed down by courts of justice and not by a Commission, although it be admitted that said Commission constitutes a quasi-judicial organism, and in all events the case is not strictly one for recovery of money. Having reached the foregoing conclusion, it is unnecessary to study and decide the second of the errors assigned. The appeal will be dismissed and the judgment and order appealed from affirmed.

EMILIO DEL TORO,
Chief Justice.

[Title omitted.]

JUDGMENT OF SUPREME COURT OF PUERTO RICO.

San Juan, P. R., February 11, 1938.

For the reasons stated in the foregoing opinion, the judgment and order appealed from rendered by the District Court of San Juan on July 22, 1937 and September 3, 1937, respectively, in the above entitled case, are hereby affirmed.

It was thus pronounced and ordered by the court as witness the signature of the Chief Justice. Mr. Justice Cordova Davila took no part in this decision.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same Title.]

MOTION FOR RECONSIDERATION OF JUDGMENT.

To the Honorable Court:

With the respect that this court has always merited to the attorneys representing plaintiff-appellant for its absolute integrity and clear

judicial thinking, we now file this motion for reconsideration of the judgment handed down in the above-entitled case on February 11th of this year, with the conviction that, if this court gets to the conclusion that it should substitute said judgment for a different one, it will not hesitate to do so in compliance with its clear duty to make justice to the litigants.

To substantiate this motion we first insist in the following proposition:

DEFENDANT CONFESSED ALL THE ULTIMATE FACTS OF THE BILL OF INJUNCTION.

It seems to us elementary in the mechanics of our civil procedure as established by the laws in force that the manner to traverse the facts contained in a complaint is to deny them, producing later at the trial the necessary evidence to substantiate the denial. If the facts are denied, but different facts from those alleged in the complaint are not proved, the latter will be taken as established. If the facts are not denied they will be taken as confessed. In our case defendant did not deny the facts contained in the bill, but to the contrary, in a stipulation filed with the purpose of obviating the production of evidence, confessed them all. The first paragraph of said stipulation reads:

> "A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.
>
> "B. The facts alleged in the bill thus confessed, the parties submit to the Court the present case . . ."

We submit our opinion that this court is bound to take as confessed the ultimate facts of our petition. We do not see how it is possible to deny by subtle interpretations the fact that defendant has confessed the ultimate facts of our cause of action.

This court quotes with tacit approval paragraphs of defendant's brief in which he intends to escape from the weight of his confession of the ultimate facts of the bill. Thus:

> ". . . in our case plaintiff has never proved that it does not owe the amount whose payment is demanded, and to the contrary, there exists an official order of the Workmen's Relief

Commission to the effect that this employer, because of its non-insured status should pay the compensation awarded to the injured workmen.

"Plaintiff further alleges that inasmuch as by the stipulation of facts filed before the court below the ultimate facts of the bill were confessed, it should be accordingly understood that defendant admitted that the Orders of the Workmen's Relief Commission of April 24th, 1928 were issued against the express wording of the law, and were therefore null and void. Letter A of said stipulation reads as follows:

'Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law it might contain.'

"It is undisputable that what was admitted by defendant by said stipulation were the facts which occurred and which gave origin to all this proceeding since its inception. The question whether the Order of the Workmen's Relief Commission is or is not valid is not a question of fact but of law exclusively.

"As it can be easily determined from the contents of the stipulation in question, the only conclusion which can be reached is that the parties wanted to argue and submit to the inferior court questions of law, to be limited to the following:"

This court states, at page 8 of the opinion, in commenting the statement of defendant:

"Although the first paragraph of the stipulation is not as clear and concrete as it should have been, the same is in our opinion susceptible of the interpretation put to it by defendant, an interpretation which makes defendant consistent with the position he assumed before the District Court and before this Supreme Court."

In answer to this contention it is enough to state that plaintiff-appellant did not need to prove it did not owe the amount claimed, for the clear reason that defendant himself, by virtue of his confession of the ultimate facts of our bill released it from that burden. In regard to the existence of an official order of the Workmen's Relief

Commission to the effect that plaintiff was not an insured employer, it is enough to repeat the argument, to wit, that in express words defendant confessed that the Texas Company was an insured employer by virtue of payment of the corresponding premium to the Treasurer of Puerto Rico covering the fiscal year 1925–26.

Let us see what facts, among others, were accepted by defendant. The third paragraph of the bill alleges:

> "3. That on or before July 15, 1925, plaintiff, in pursuance of Section 13 of the Workmen's Accident Compensation Act, as amended by Act No. 61 of 1921, (p. 490) that was then in force, filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from plaintiff the corresponding premiums, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since the date in which it filed the above mentioned record or statement, until the 15th of July, 1926."

Let us see now the law in force at that time to see if we are correct in our assertion that there cannot be any doubt that The Texas Company (P. R.), Inc., was insured during the year 1925–26:

> "It shall be the duty of every employer of workmen entitled to the benefits of this Act, to file with the Workmen's Relief Commission on or before the fifteenth day of July in each year a duplicate statement under oath showing the number of workmen employed by said employer, the class of occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year. On the total amount of wages declared in said statement the premium prescribed . . . shall be computed . . .
>
> "The insurance of every employer shall become effective immediately after his payroll or statement is filed in duplicate in the office of the commission."

Obviously if plaintiff had insured its employees and workmen, and the rationale of the orders of the Commission was that plaintiff was not an insured employer for which reason it was charged with the obligation of paying the compensation, then the orders are clearly null and illegal, because issued without jurisdiction.

That the Commission lacked jurisdiction to charge plaintiff with payment of the compensations is clear. Section 7 of the Act of 1925 in regard to workmen's compensations is the one granting authority to the Commission to charge an uninsured employer with payment of the compensations. And that only in case that the employer, in violation of the law was uninsured.

> "In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum;"

Hence the Commission lacked absolutely authority, power and jurisdiction to compel an employer duly insured to pay compensations to the beneficiaries of the deceased workmen. The lack of that power is absolute, and does not admit of interpretations. It simply did not exist, and not existing, the Commission did not have jurisdiction to charge plaintiff with said duty.

> "A judgment rendered by a court having no jurisdiction is a mere nullity, and will be so held and treated whenever and for whatever purpose it is sought to be used or relied on as a valid judgment. This involves jurisdiction of the subject matter or cause of action, and jurisdiction to determine the particular question determined and to render the particular judgment awarded." 33 C.J. 1073.
>
> "A judgment not authorized by law is void." 33 C. J. 1077.
>
> "A judgment which is void . . . is a mere nullity; it is not binding on anyone; it raises no lien or estoppel; it does not impair or affect the rights of anyone; . . . it confers no rights

upon the party in whose favor it is given, and affords no protection to persons acting under it. Such a judgment may be vacated or set aside . . . but it is not necessary to take any steps to vacate or avoid it until an effort is made to enforce it." 34 C. J. 509–510.

This high tribunal is acquainted, of course, with the theory that in relation to courts or quasi judicial bodies of limited powers, there is not a presumption of jurisdiction. It has been clearly decided that a board or Industrial Commission or a workmen's relief commission falls under the rule that jurisdiction is not assumed.

"Section 664. Presumption of jurisdiction. As the board is a special or limited tribunal, there is no presumption in favor of its jurisdiction; the fact upon whch the jurisdiction is founded must appear in the record."

"Section 665. In accordance with the rule relating to courts of limited powers, the board cannot acquire jurisdiction as to the subject matter by waiver, agreement, conduct or estoppel."

"Section 666. The jurisdiction of the board is confined by the act and limited by its provisions."

"Section 667. Lack of jurisdiction in the board may be asserted at any time." 71 C. J. 921 *et seq*, section on Workmen Compensation Acts.

Holding with undisputable authority that plaintiff can impeach the validity of the orders of the Commission, the cases have established in relation to facts similar to ours:

"Where the parties admit facts which show that a judgment in a former suit is void or where they are established without objection, the case is similar to one wherein the judgment is void upon its face and is subject to attack. The defect of jurisdiction may be either in respect to the person, the subject matter, or the authority to render the particular judgment or decree, a judicial determination outside the issues being without jurisdiction and void. Where a court is authorized by statute to entertain jurisdiction in a particular case only, if it undertakes

to exercise jurisdiction in a case to whch the statute has no application, such court acquires no jurisdiction and its judgment when made is a nullity and subject to collateral attack." 34 C. J. 528, Section 834.

The above doctrine is entirely applicable to our case. When the parties admit that a judgment in a former case is null, the situation is identical to that in which the nullity appears from the very judgment itself and this can be attacked. Plaintiff alleged and defendant admitted facts more than sufficient for this court to conclude that the orders of the Workmen's Relief Commission are null. And are null as if the nullity sprang from their very text by virtue of the confession made by the parties of facts which unquestionably make said orders null. The lack of jurisdiction may consist in the lack of authority to issue a particular order or judgment, and we maintain that the Workmen's Compensation Law never gave authority to the Commission to charge plaintiff with the duty to pay the compensations when it clearly appeared, and so clearly that defendant himself so admits, that plaintiff had paid its premium and was accordingly insured.

"An award under the Workmen's Compensation Act against a non-compliance employer is not final or conclusive on fundamental or jurisdictional questions involved in the award." *State* v. *Watland*, 221 N. W. 680.

In the admirable monograph on workmen's compensations appearing in the recent volume, 71 C. J. 956, Section 720, it is stated that before a board or Industrial Commission can issue with adequate jurisdiction an order or decree it is necessary to prove "the existence of the necessary jurisdictional facts".

"Prerequisites to Exercise of Jurisdiction. All conditions of the compensation act must be present before the board or commission can make any award. Thus the employer and the injured person must come under the act, and a commission cannot entertain a proceeding against one not subject to the provisions of the act. Every statutory step for maturing a claim from the

time of the injury to its final adjudication under the compensation laws is a mandatory requirement to the exercise of jurisdiction by the statutory agencies." 71 C. J., page 959, Section 722.

We insist with all the emphasis that we are capable of that according to the own confession of defendant, the Commission lacked the jurisdictional facts necessary to issue the orders attacked, inasmuch as plaintiff was duly insured. It was a jurisdictional requisite before the orders could be issued that plaintiff be not insured, as stated by the doctrine referred to above in regard to the jurisdiction of the Commission, it being clear that the same cannot "entertain a proceeding against one not subject to the provisions of the Act". And plaintiff, having paid her workmen's compensations premium—a fact accepted and confessed—"was not subject to the provisions of the Act". The Texas C.. (P. R.) Inc., insured employer for the year 1925–26 was not subject in any form or manner whatsoever to a proceeding to compel her to pay compensations that should have been paid by the State fund.

Defendant says in his brief "that what defendant admits in the said stipulation are the facts which occurred and which gave origin to all this proceeding since its inception". This is enough because it is a confessed fact that plaintiff complied with the acts required to insure it, as ordained by the law then in force. That being so we cannot see how it is possible for this court to escape the conclusion that the orders of the Commission were issued without jurisdiction, the law not authorizing said organism to impose any liability to an insured employer.

The second point of this motion for reconsideration is to the effect that

DEFENDANT IS NOT AUTHORIZED BY LAW TO COLLECT BY DISTRAINT THE COMPENSATIONS HEREIN.

We agree with this Honorable Court that as a general rule statutes establishing procedure can and should be considered retroactive in their effects. But when the law establishing any procedure contains a saving clause, that is, a clause keeping the former procedure as to pending cases, then there can be no doubt that the new procedure

cannot be applied to cases pending under the former law. Section 34 of the law in force in regard to workmen's compensations (Act No. 45 of 1935) provides:

> "The provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure followed in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident, and the workmen shall be entitled to such sum of money as may be prescribed by said laws."

We now call the attention of the court to the fact that the law provides that its dispositions will not affect in any form whatsoever the pending cases or claims. Such cases or claims will proceed . . . , proceed, from procedure, which means adjective law, the manner to enforce substantive rights. After said section provided that the procedure as established by the laws in force at the time of the occurrence of the accident should be respected, it went further and stated "and the workman will be entitled to such sum of money as may be prescribed by said laws". The court has not noticed a clear distinction in this transitory provision of the law. When that section states that the cases or claims will proceed until their termination in accordance with former laws, the former procedure, the adjective law, the procedural mechanics that will serve as a means to obtain the compensation is being saved. When the said section, at the end, states "and the workmen shall be entitled to such sum of money as may be prescribed by said laws", what is saved is not the former procedure, but the substantive rights previously acquired by the workman or his beneficiaries to receive a certain amount as compensation. Therefore the section we are commenting contains two different aspects in the mechanics of workmen's compensation. By the first, the former procedure is saved. By the second the substantive right of utmost importance in the law is saved, *i. e.*, the amount of the compensation to be awarded.

When this Honorable Court states that the spirit of said section is only to preserve for the workman the compensation to which he was

entitled by virtue of the former laws, it is limiting said section to only one of its two aspects, and is forgetting the fact that the procedure established by former laws, which should control all the claims or cases pending, is saved.

In specific cases wherein the determination of the retroactive application of statutes of workmen compensation was involved, it has been held that when a saving clause exists in regard to pending claims, no retroactive character can be given to the law.

Superior Coal v. *Ind. Com.*, 151 N. E. 890, 892, Ill. 1926:

> "The law in such cases is that a statute of that character (a procedural) is to be held retrospective in its operations, AS THERE IS NO SAVING CLAUSE PROVIDING OTHERWISE."

Duqoin v. *Ind. Com.*, 151 N. E. 108, Ill. 1928:

> "When a change of law merely affects the remedy or the law of procedure, all rights of action will be enforceable under the new procedure without regard to whether accrued before or after such change of law and without regard to whether suit has been instituted or not, unless there is a saving clause as to existing litigation." *City of Chicago* v. *Ind. Com.*, 292 Ill. 409, 127 N. E. 46. *Otis* v. *Ind. Com.*, 134 N. E.

If the proper procedure was for the Commission through the Attorney General, in accordance with the law in force at the time of the occurrence of the accidents, to bring an ordinary action to collect the compensations, then it seems clear that the Treasurer of Puerto Rico not having authority to attempt the collection of the compensations, should be enjoined from collecting them by distraint, a procedure which we all know is not favored by the courts and is one *strictissime juris*. The Treasurer of Puerto Rico in this proceeding is really a private person without authority of law to attempt this violent collection. Not being so authorized by the applicable law to collect from plaintiff, he is a mere "trespasser" attempting to hold violently property not belonging to him. Naturally an injunction lies to enjoin him from committing an act not only arbitrary, but illegal.

This Honorable Court disposes too lightly our contention that,

even accepting for the sake of argument that the procedure established by the law now in force be the one applicable, even so the treasurer lacks authority to collect by distraint proceeding. Section 15 of Act 45 of 1935 reads:

> "In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided,* That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; . . ."

In what part of said section and in what form is authority given to the Treasurer of Puerto Rico to collect these compensations by the summary procedure of notification, attachment and public sale? That section only states that the treasurer "Shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer. . . ." Act of 1928 in which defendant tried to find justification in the court below provided in Section 25 that the treasurer "shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect as if it were a tax levied on such property. . . ."

As taxes can be collected by distraint, it is clear that under the law of 1928 the compensations, which were given the same legal priority and effect of taxes, could be collected by distraint. But the Act of 1935 does not give them such legal effect or priority, and only

states that the treasurer shall collect them. That being the case, it shall be taken that he can only collect them by an ordinary action.

3 Codley on Taxation 2725, sec. 1381 (4th Edition):

"The legislature has power to authorize and direct tax sales of land without a previous judgment or decree ordering the sale, BUT SUCH POWER TO SELL REAL ESTATE FOR DELINQUENT TAXES DOES NOT EXIST UNLESS EXPRESSLY CONFERRED BY STATUTE."

Ibid. Sec. 1382:

"TAX SALES ARE MADE EXCLUSIVELY UNDER STATUTORY POWER, THE POWER WHICH THE STATE CONFERS TO ASSESS AND LEVY TAXES DOES NOT OF ITSELF, INCLUDE A POWER TO SELL LANDS IN ENFORCING THE COLLECTION, BUT THE POWER MUST BE EXPRESSLY GIVEN. THE OFFICER WHO MAKES THE SALE SELLS SOMETHING HE DOES NOT OWN, AND WHICH HE CAN HAVE NO AUTHORITY TO SELL EXCEPT AS HE IS MADE THE AGENT OF THE LAW FOR THAT PURPOSE."

Brown v. *Veazie*, 25 Me. 359, 363:

"Sales of real estate for the non-payment of taxes must be regarded in a great measure as an exparte proceeding. The owner is to be deprived of his land thereby; and a series of acts preliminary to the sale are to be performed to authorize it on the part of the assessors and collectors to which his attention may never have been particularly called; *and, experience and observation render it notorious that the amount paid by purchasers at such sales is uniformly trifling in comparison with the value of the property sold.* It has therefore been held, with great propriety, that, to make out a valid title under such sales, *great strittness is to be required; and it must appear that the provisions of law preparatory to and authorizing such sales have been punctiliously complied with.*"

"Sales of land for delinquent taxes *being in derogation of private rights of property*, the power has been said to be *strictissimi juris, and* statutes authorizing such sales must be *strictly construed in favor of the owner* of the land. (*Koontz* v. *Ball*, 96

W. Va. 117, 122 S. E. 461) or in so far as they are intended for their benefit or the protection of the citizen, *and the scope of such statutes is never enlarged* beyond their actual terms." *Peterson* v. *Graham*, 131.

"The power to sell land for delinquent taxes, in a collector of taxes, *is a naked power conferred by statute and can only be validly exercised in conformity with the statute.*" 61 C. J. 1116.

"AUTHORITY TO SELL LAND FOR TAXES BEING EXCLUSIVELY STATUTORY, SUCH AUTHORITY CAN BE EXERCISED ONLY IN THE PRECISE CASES SPECIFIED IN THE LAW, AND IT HAS BEEN HELD THAT AN ACT GRANTING THIS AUTHORITY WILL NOT APPLY TO TAXES ALREADY DELINQUENT UNLESS SUCH ACT IS EXPRESSLY MADE RETROACTIVE, NOR CAN THE POWER BE EXERCISED AFTER THE END OF THE PERIOD OF TIME LIMITED BY LAW FOR THAT PURPOSE." 61 C. J. 115, citing numerous authorities.

We now call attention to the desperate and difficult position of plaintiff-appellant. There is no doubt that it does not have any remedy at law, and that the only remedy is the one in equity now prayed for. The orders of the Commission are clearly null and contrary to law; and this is confessed by defendant himself who admits that plaintiff being duly insured for the year 1925–26, the Commission issued orders imposing the payment of the referred compensations for the reason that it was not insured. The law in force at the time of the death of the workmen, the applicable law in so far as the procedure is concerned in the collection of the compensation, and notwithstanding the saving clause to which reference has been made, has been declared inapplicable by this court, being that law the only one which could remedy the situation of plaintiff, inasmuch as in an ordinary suit brought by the Attorney General, plaintiff can set up the defense of having paid its workmen compensation insurance premiums. Notwithstanding the fact that the law that this court holds applicable, to wit, Act of 1935, does not authorize the treasurer to collect the compensations by distraint, the denial of the writ of injunction is equivalent to a tacit authorization for doing so, that being a judicial amendment to the statute in the sense of includ-

ing such authorization. And all this under universally established dispositions to the effect that fiscal statutes are construed favorably to the taxpayer and against the sovereign.

We want to call the attention to the fact that plaintiff is being deprived of its substantive right of defending itself and of raising the proper questions against defendant in an ordinary suit in collection of the compensations, as, for example, the right clearly substantive to allege and prove—a fact admitted by defendant—payment of the premium of insurance; and that a statute which destroys an absolute, fundamental and substantive right to a defense of an unjustified attack to take its property away cannot be given retroactive effect.

In short that, The Texas Co. (P. R.), Inc., which complied with its duty under the law to insure its employees for the year 1925–26, a fact confessed by defendant, and that paid the corresponding premium, is now deprived of its property without due process of law because the Workmen's Relief Commission, without jurisdiction, has charged it with the obligation to pay damages that it was the duty of the State fund to pay, and there has not been and there is not now an adequate remedy in our laws to avoid this injustice and which would safeguard the property rights of plaintiff, of which it is threatened to be deprived, without color of due proces of law.

The nullity of the orders attacked being based on lack of jurisdiction, we deem that any moment is proper and none better than at execution to resist the orders in question.

By virtue of the above considerations, we respectfully pray this court to reconsider its judgment of February 11, 1938 and in its consequence to enter a new judgment reversing that of the District Court of San Juan.

San Juan, P. R., February 18, 1938.

JAMES R. BEVERLEY,
R. CASTRO FERNANDEZ,
JOSE LOPEZ BARALT,
Attorneys for Plaintiff-Appellant.

[Same Title.]

(By the Court at the proposal of Mr. Chief Justice del Toro.)

San Juan, Puerto Rico, March 31, 1938.

To hear the parties on the motion for reconsideration filed by appellant in this case, the twentieth day of April, 1938, is hereby set at 2 P. M. it being understood that—unless the parties petition differently—if the court reaches the conclusion that the reconsideration is proper, it will not only so declare, but will also decide the case finally, making now the suggestion to appellee that he should not limit himself to expound orally his arguments at the hearing, but that he should also set them down in writing.

It was thus decided by the court, as witness the signature of the chief justice. Mr. Justice Cordova Davila took no part.

EMILIO DEL TORO,

Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[Same Title.]

OPINION OF THE COURT

DELIVERED BY MR. CHIEF JUSTICE DEL TORO.

(ON MOTION FOR RECONSIDERATION.)

San Juan, P. R., July 13, 1938.

This case was decided on February 11th of this year. 52 P. R. R. 658, 52 P. R. R. . Plaintiff filed a lengthly motion for reconsideration and we heard the parties on the same orally and in writing on April 20th next. All the questions involved merit consideration and to them all we have given due study, reaching finally the conclusion that the reconsideration should be denied.

This deals with two essential points, to wit, admissions of defendant and the procedure followed in the collection of the compensations.

As to the first point, we have nothing to add to what we already said in our opinion of February 11th. We have again examined the stipulation in question and do not believe that acting in justice it should be construed as plaintiff insists it should.

The second point involves two questions. That of the retroactive effect of Act No. 45 of 1935, studied under the dispositions of Section 34, in regard to which nothing new is really said by appellant, and that of the procedure to be followed by the treasurer in the collection of the compensations, which is the one that made us hesitate and moved us to hear again the parties.

In the referred to opinion of this court of February 11th, *Texas Co.* v. *Sancho Bonet*, 52 P.R.R. 658, 667, 52 P.R.R. , it was said:

> "The fact that Act No. 45 of 1935 be the one applicable and not Act No. 85 of 1928, is of no consequence, because according to them both, the collection by the Treasurer is allowed as in case of a tax."

And in the motion for reconsideration, after quoting part of Section 15 of Act No. 45 of 1935, appellant says:

> "In what part of said Section and in what form is authority given to the Treasurer of Puerto Rico to collect these compensations by the summary procedure of notification, attachment and public sale? That Section only states that the Treasurer 'shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer . . .' Act of 1928 in which defendant tried to find justification in the court below provided in Section 25 that the Treasurer 'shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect as if it were a tax levied on such property . . .'
>
> "As taxes can be collected by distraint it is clear that under the Law of 1928 the compensations, which were given the same legal priority and effect of taxes, could be collected by distraint. But the Act of 1935 does not give them such legal effect or priority, and only states that the Treasurer shall collect them. That being the case it shall be taken that he can only collect them by an ordinary action."

We believe that the applicable law is the Act of 1935 so often cited, its dispositions controlling.

We have seen that plaintiff itself admits that under the dispositions of the former law—Act of 1928— the treasurer was authorized to collect the compensations as if these were taxes, *i. e.*, by the special summary procedure authorized by the statute. This simplifies the question.

Let us see what was ordained by the Act of 1928. Section 25 (Laws of 1928, page 862), provided:

> "In case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Industrial Commission shall determine proper compensation, plus expenses, incurred by it, and shall certify its decision to the Treasurer of Porto Rico who shall assess said compensation, plus expenses, on the employer and collect them from him; and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property."

And the law now in force, Act of 1935, Section 15, (Laws of this year, page 292) provides:

> "In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the Manager of the State Fund shall determine the proper compensation plus the expenses in the case, and shall certify its decision to the Treasurer of Puerto Rico who shall collect from the employer such compensation and expenses, both of which shall constitute a lien on all the property of the employer; *Provided*, That said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exception of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses."

We believe there is no doubt that the Act of 1938 authorizes the collection by distraint proceeding and do not think that it can be concluded that by the amendments introduced to it by the law of 1935 the authority of the treasurer to collect a compensation by that procedure was withdrawn.

We are dealing with the execution of a final order handed by certain administrative organism in the exercise of its authority after due consideration of the facts and of the law, with a hearing or opportunity of a hearing to the interested parties, and against which recourse could have been taken to the courts of justice. By it certain person or entity is sentenced to pay a certain sum of money. And by both laws it is sent to the treasurer for its execution.

Act of 1928 states "who (the treasurer) shall assess said compensation, plus expenses", and Act of 1935, "who (the treasurer) shall collect from the employer such compensation and expenses". From the 1935 law the only words omitted are "shall assess", and correctly so because the treasurer never assessed or determined the award.

Act of 1928 states further "and both such compensation and such expenses shall constitute a lien on all the property of said employer, with the same legal effect and priority as if it were a tax levied on such property", and the Law of 1935 "both of which shall constitute a lien on all the property of the employer". The words "with the same legal effect and priority as if it were a tax levied on such property" are omitted but in its stead there appears a provision which reads as follows:

> "That said compensation and expenses are hereby declared to be liens preferred over any other charge of lien for taxes or any other cause, with the exception of the mortgage credits, crop loans and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses."

What was done, then, in 1935, was to make more concrete the meaning of the general disposition in regard to the "same legal effect and priority as if it were a tax" contained in the Act of 1928.

The Supreme Court of Arkansas, in *State* v. *Gux Blass Co.*, 105 S. W. 2nd. 853, 858, said:

> ". . . in interpreting the amendatory statute, we ought to follow the well-etsablished rules of statutory construction, and one of those rules is that, where a statute is re-enacted in substantially the same form as the old one, the presumption should be indulged that the lawmakers intended no changes other than those clearly expressed in the language of the new statute."

If it is admitted that the treasurer had the authority and duty to collect the compensation by distraint in 1928, it is necessarily admitted that he still has that authority and duty in 1935.

That authority emanates from the very nature of his office, "The Treasurer shall collect and be the custodian of public funds . . . and perform such other duties as may be provided by law", as ordained by the Organic Act of 1917 in Section 15.

We have already seen that by virtue of both laws, Acts of 1928 and 1935, he was charged with the duty to collect the compensation now in discussion, the legal effects of which now specified continue to be the same of a tax, a duty which logically and as has been uniformly interpreted, he complies with following the procedure ordained by the Political Code, *i. e.*, by notification of the attachment of the property to the debtor which produces the same effect of a judicial judgment upon the attached property (Section 315, Political Code) and sale at public auction of the property under the law (Sections 335 to 344 of the Political Code).

What other procedure could and should have followed the treasurer in collecting moneys whose collection is ordained by law? When the Legislature ordained a different procedure—that of Act No. 102 of 1925 in force until 1928—it was not the treasurer the officer charged with collecting, it being provided that after the Workmen's Relief Commission awarded a compensation "shall so report to the Attorney General for him to bring suit against said employer in a court of competent jurisdiction for the collection of said sum".

Although we acknowledge that the Legislature could and should

have spoken more clearly, its action implies its aim with such strength, that we felt before and continue to feel justified in deciding that the procedure followed by defendant in the collection of the compensations in this case is authorized by law. The motion for reconsideration will be denied.

EMILIO DEL TORO,
Chief Justice.

[Same Title.]

ORDER.

San Juan, P. R., July 13, 1938.

For the reasons stated in the foregoing opinion, the motion for reconsideration is hereby denied.

It was thus ordered by the court as witness the signature of the Chief Justice.

EMILIO DEL TORO,
Chief Justice.

Attest: JOAQUIN LOPEZ, *Secretary-Reporter.*

[MEMORANDUM: Petition for appeal, allowed by Bingham, J., August 5, 1938; citation returnable September 4, 1938, service accepted and cost bond in the sum of $300 are here omitted. A. I. CHARRON, *Clerk.*]

[Title omitted.]

ASSIGNMENT OF ERRORS.

[Filed August 13, 1938.]

Now comes The Texas Company (P. R.) Inc., and files the following assignment of errors upon which it will rely in the prosecution of the appeal herewith petitioned for in said cause, from the judgment of this court entered on the eleventh day of February, 1938, and the order of July 13, 1938, denying a rehearing:

I. The court erred in holding that defendant-appellee did not confess the ultimate facts of the injunction bill, and in not taking as confessed the ultimate facts of the injunction bill for the determination of this cause.

II. The court erred in not holding that plaintiff-appellant was an insured employer at the time of the accidental death of her three workmen described in the bill.

III. The court erred in not holding that the orders of the Workmen's Relief Commission of April 25, 1928 were erroneous, illegal and handed down without jurisdiction.

IV. The court erred in holding that plaintiff-appellant had had an adequate remedy at law to review the orders of the Workmen's Relief Commission of April 24, 1928, of which it never took advantage.

V. The court erred by completely disregarding Section 34 of Law No. 45 of April 18, 1935 of the Legislature of Puerto Rico, entitled "Workmen's Accident Compensation Act", which provides that the procedure to be followed in all pending workmen's compensation litigations or claims shall be in accordance with the laws in force at the time of the accident.

VI. The court erred in holding that the compensations herein could be legally collected by the Treasurer of Puerto Rico by distraint proceedings.

JAMES R. BEVERLEY,
ROUNDS, DILLINGHAM, MEAD & NEAGLE,
by RALPH S. ROUNDS,
Attorneys for Plaintiff-Appellant.

[Title omitted.]

TRANSLATOR'S CERTIFICATE.

I, B. Marrero Rios, official interpreter and translator of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the City of San Juan, Puerto Rico, this day of August, 1938.

B. MARRERO RIOS,
Official Interpreter and Translator of the Supreme Court of Puerto Rico.

[Title omitted.]

CLERK'S CERTIFICATE.

I, B. Marrero Rios, acting secretary-reporter of the Supreme Court of Puerto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the order of the court.

I further certify that the translation of said papers and proceedings has been revised by the official translator and interpreter of this court, as shown by his certificate attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the City of San Juan, Puerto Rico, this day of August, 1938.

B. MARRERO RIOS,
Acting Secretary-Reporter of the Supreme Court of Puerto Rico.

[SEAL]

PROCEEDINGS IN CIRCUIT COURT OF APPEALS.

On January 17, 1939, this cause came on to be heard, and was fully heard by the court, Honorable Scott Wilson, Circuit Judge, and Honorable Elisha H. Brewster, District Judge, sitting, and submitted on briefs to Honorable George H. Bingham, Circuit Judge.

Thereafter, to wit, on March 25, 1939, the following Opinion of the Court was filed:

OPINION OF THE COURT.

March 25, 1939.

BINGHAM, J. This is an appeal from a judgment or decree of the Supreme Court of Puerto Rico affirming the action of the District Court of San Juan in dismissing the plaintiff's bill.

The bill was brought November 5, 1936, to enjoin the Treasurer of Puerto Rico from enforcing, by distraint, orders of the Workmen's Relief Commission of April 24, 1928, wherein the Relief Commission awarded compensation to the dependants of each of three laborers accidentally killed on February 12, 1926, while working on a concrete platform by the side of a warehouse and wharf belonging to the plaintiff, cleaning the platform from earth and stones that had fallen upon it from a natural wall formed by earth, when the upper part of it slid and caused their death.

In the bill it was alleged that the orders of the Workmen's Relief Commission, awarding compensation to the beneficiaries of each deceased workman, declared therein that "plaintiff was not an insured employer", and directed that the administrative secretary of the Relief Commission "prepare the corresponding liquidations" and send the same to the Attorney General of Puerto Rico with a copy of each order, the orders directing him to collect the respective amounts from the plaintiff pursuant to Section 7 of Act No. 102, of September 1, 1925. It then alleged the liquida-

tions made by the administrative secretary of the Commission relating to the death of each of the three employees, as follows:

Case of Rodulfo Suarez.

Compensation for death	$2,000.00
Administrative expenses, 12 per cent.	240.00
Total	$2,240.00
Less advances made by employer	45.33
Total	$2,194.67

Case of Isidro Villoch.

Compensation for death	$2,000.00
Administrative expenses, 12 per cent.	240.00
Total	$2,240.00

Case of Isidro Perez.

Compensation for death	$2,000.00
Administrative expenses, 12 per cent.	240.00
Total	$2,240.00

It was alleged in paragraph 3 of the bill, that the above orders, awarding compensations against the plaintiff, charging it with their payment and declaring that it was an uninsured employer, were illegal and without authority in that the plaintiff was an insured employer and had complied with all the requisites of the law, to wit: (par. 2 of the bill) "that on or before July 15, 1925" and "in pursuance of Section 13 of the Workmen's Accident Compensation Act" then in force, it "filed with the Workmen's Relief Commission a statement in duplicate under oath showing the number of workmen, the nature of the occupation of said workmen and the total amount of wages paid to said workmen during the preceding fiscal year, and the Treasurer of Puerto Rico, under said law, assessed, taxed and collected from the plaintiff the corresponding premium, for which reason and by express disposition of said Section 13, plaintiff was an insured employer since

the date in which it filed the above mentioned record or statement, until the 15th of July, 1926."

It was further alleged in paragraph 5, that it had "paid the premium" for the year in "which the accident occurred".

In paragraph 4 it was alleged that on February 12, 1926 (about seven months after filing the duplicate statement with the Workmen's Relief Commission and the assessment and collection from the plaintiff of the premiums for the fiscal year running from July 15, 1925 to July 15, 1926) Rodulfo Suarez, Isidro Villoch and Isidro Perez, laborers employed by the plaintiff, died as a result of an accident incident to their work which occurred while they were working together with other laborers, as employees of the plaintiff cleaning up the concrete platform, as above stated; and that their "usual employment" was "to help in the embarkment and disembarkment of gasoline drums, the filling of same, placing them in order, and cleaning the warehouse and platform."

Paragraph 1 of the bill alleged that the plaintiff was a Puerto Rican corporation "engaged in the wholesale business of buying and selling" petroleum products, "in which business it employs and actually employed during the dates to which this bill refers, besides its office personnel, various laborers, all of which were insured under the workmen's compensation in force on the dates later referred [to] herein."

In the seventh paragraph it was alleged that on June 2, 1928 (some thirty-nine days after the entry of the orders of April 24, 1928), the plaintiff brought petitions for certiorari with a view to testing the validity of the orders declaring that the plaintiff was not insured; and that in the District Court and in the Supreme Court, on appeal they were denied for lack of jurisdiction.

In paragraph eight it was alleged that between April 24, 1928, and September 4, 1936, no attempt was made by the Attorney General of Puerto Rico (the one having the legal authority) "to collect the compensations awarded by the above referred to orders, and no legal action has been started to collect the same under Section 7 of the Workmen's Accident Compensation Act, No. 102, of

1925"; but on September 14, 1936 (paragraph 9), the present Industrial Commission (created under Act 45 of April 18, 1935, a successor of the Workmen's Relief Commission created under Act 102 of September 1, 1925) handed down an order in the case of Rodulfo Suarez, directing the defendant, Treasurer of Puerto Rico, to levy an attachment upon the property of the plaintiff and collect the compensation awarded his beneficiaries April 24, 1928, in the sum of $2,194.67; and that the Treasurer, after requesting the plaintiff to pay the same and threatening summarily to attach its property, on October 27, 1936, seized the plaintiff's truck, notifying it that if it did not pay said amount, plus $1.00 costs, by November 6, 1936, the property attached would be sold at public sale; that the sale would cause the plaintiff irreparable damage unless enjoined; and that it was the intention of the Industrial Commission and the defendant Treasurer to pursue an identical course in the collection of the other two compensations unless enjoined.

And in the tenth paragraph it was alleged that the order of the Industrial Commission of September 14, 1936, and the acts of the defendant in attempting to collect said compensation by summary attachments were illegal, arbitrary and abusive for the following reasons:

> "(a) Because the orders of the Workmen's Relief Commission of April 24, 1928, declaring plaintiff an uninsured employer are illegal and void because it appears from their very face and from the records before said Commission that plaintiff at the date of the accident was a duly insured employer in accordance with the dispositions of Section 13 of the Workmen's Accident Compensation Acts of 1921 and 1925."

(b) That if the order of April 24, 1928 was legal and valid, the procedure to be followed to collect the compensation awards was to send the orders to the Attorney General for him to institute the proper action in a court of competent jurisdiction against the

employer to recover the awards as provided in Section 7 of the Act 102 of 1925; that Section 34 of Act No. 45 of April 18, 1935, an Act in force when the order of the Industrial Commission of September 14, 1936, was made, so required. And for other reasons not now necessary to mention.

In paragraph 11 it was alleged that the plaintiff had no adequate remedy at law and would suffer irreparable loss if the defendant was not restrained.

In the District Court of San Juan the case was submitted on the following stipulation:

"A. Defendant confesses the ultimate facts of the bill, except the conclusions of fact or of law that it might contain.

"B. The facts alleged in the bill thus confessed, the parties submit to the court the present case under the following propositions of law, the determination of which they both understand decides this case."

The defendant maintains (1) "that the Supreme Court of Puerto Rico having decided against the plaintiff the certiorari cases Nos. 6986, 6987 and 6988 to which reference is made in paragraph 7 of the bill, the injunction now prayed for does not lie"; (2) that the "plaintiff not having taken recourse of the remedy provided by Section 9 of Act 102 of 1925 to review the orders of the Workmen's Relief Commission, the writ of injunction now prayed for does not lie"; (3) "that the orders of the Workmen's Relief Commission of April 24, 1928, described in the bill do not have the nature of final judgments under the dispositions of the Code of Civil Procedure in force, providing that a final judgment will not be executed five years after having become final, for which reason the statute of limitation has not run against the right to execute said orders, an injunction, therefore, not lying to enjoin their execution"; and (4) "that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in

Section 25 of Act 85 of 1928, and not, as maintained by plaintiff, that specified by Section 7 of Act 102 of 1925."

"C. Plaintiff maintains the negative of all the propositions as maintained by the defendant, as above expounded."

"And, in order to save time and efforts, the parties now ask the court to consider the present case as tried and submitted by this stipulation, without a previous setting of the same in the general calendar."

In the District Court the bill was dismissed and, on appeal to the Supreme Court, it was likewise dismissed. In the latter court it was dismissed for two reasons: (1) because under Section 9 of the Workmen's Compensation Act of September 1, 1925, and which took effect upon its approval, the plaintiff could have appealed from the orders of the Workmen's Relief Commission to the District Court, in which orders it was declared that the plaintiff was not an insured employer, and had the question whether it was or was not an insured employer determined under Section 9, which provides:

"Section 9. Appeals from the decisions of the Workmen's Relief Commission to any district court shall be allowed to the claimant, his beneficiaries or heirs in all cases of permanent partial disability, permanent total disability or death. Likewise the employer may appeal from any decision of the commission when such decision is to the effect that the accident is one for which compensation is granted under this Act."

Paragraph 3 of Section 2 of that Act also provides:

"This Act shall apply to every employer who employs any laborer or employee whose wages do not exceed the sum of fifteen hundred (1,500) dollars computed annually; *Provided*, that pursuant to the provisions of this Act *compensation shall be paid to the injured laborers* who become disabled or who lose their lives through accidents originating from any act or function inherent in their work or employ-

ment and occurring during the course of their employment as a consequence thereof or from occupational diseases or death due to such occupation contracted in any work performed by administration under the direction of the Insular Government, *payable from the government trust fund.*"

Section 9, in terms, limits the employer's right of appeal to one from a decision of the Workmen's Relief Commission "when such decision is *to the effect* that the accident is one for which compensation is granted under the provisions of the Act"; and those provisions when read in connection with paragraph 3 of Section 2, mean that the employer may appeal from a decision of the Workmen's Relief Commission when that decision is to the effect that the accident is one for which compensation is granted under the provisions of the Act, payable out of the trust fund. And without regard to paragraph 3 of Section 2, it is certain that under the orders of the Workmen's Relief Commission of April 24, 1928, the order in question is not a decision to the effect that the accident was one for which compensation is granted under the act, for that order stated that the plaintiff was an uninsured employer and directed that the compensation should be collected by a suit brought by the Attorney General against the plaintiff—a decision "to the effect" that the accident *is not* one for which compensation is granted under the Act. This being so the plaintiff had no right of appeal under Section 9 from the orders of April 24, 1928, to review the question whether or not it was an uninsured employer.

It is also apparent that there was no occasion for giving one declared by the Workmen's Relief Commission to be an uninsured employer an appeal under Section 9 to contest that question, for the last paragraph of Section 7 of the Act provides:

"In the case of an accident to a laborer while working for an employer who in violation of the law is uninsured, the Workmen's Relief Commission shall determine proper compensation, plus expenses incurred by it, and shall report the

same to the Attorney General for institution of proper action, in a court of competent jurisdiction, against said employer to recover the aforesaid sum."

In this way the Legislature provided a remedy by which the employer, the plaintiff here, could plead in defense of the action that he was not an uninsured employer and have the question whether he was or not determined by a court of competent jurisdiction.

We therefore conclude that the Supreme Court, if it intended to rule that the plaintiff had a remedy by appeal under Section 9 and that the remedy thus afforded was as complete and adequate as the one sought by the bill (which it did not hold unless by inference), it was clearly wrong in so holding. In any event, at the time the orders of April 24, 1928, were made, the plaintiff had an adequate remedy at law by way of defense under Section 7 of the Act, whether it had such a remedy by appeal under Section 9 or not. Whatever remedy by appeal it may have had was, after the lapse of thirty days, lost in reliance upon Section 7 and the action of the Relief Commission in sending the compensation orders to the Attorney General for collection by suit in the proper court. Under these circumstances, if the plaintiff's bill is not retained and the Treasurer restrained from collecting the orders by distraint, the plaintiff will be deprived of its remedy by defense and fraud will be practiced upon it. This equity will not permit. The bill should have been retained and the fact redetermined whether the plaintiff was or was not insured, for that is a jurisdictional fact open to redetermination in this proceeding. *Crowell v. Benson*, 285 U. S. 22, 54–62.

On September 14, 1936, nearly eight years after the orders were made and sent to the Attorney General for collection, at which time no suit had been brought by the Attorney General, and when the Workmen's Relief Commission, created under the Act of 1925, and the Industrial Commission created under the Act of 1928, had ceased to exist, the Industrial Commission, created under Act 45

of April 18, 1935, without any authority, so far as we are able to discover, recalled from the Attorney General the orders of the Workmen's Relief Commission of April 24, 1928, directing the Attorney General to institute "proper action in a court of competent jurisdiction against said employer to recover the aforesaid sums," and having recalled them directed the Treasurer to collect the awards contained in these orders by distraint under Section 15 of Act No. 45 of 1935, as if that section had to do with the collection of awards for compensation made by the Workmen's Relief Commission April 24, 1928, under the prior Act of 1925. That section of the Act of 1935 reads as follows:

> Section 15. In case of an accident to a workman or employee while working for an employer who, in violation of law, is not insured, the *Manager of the State Fund shall determine* the proper compensation plus the expenses in the case, and shall certify *its decision* to the Treasurer of Puerto Rico, who shall collect from the employer such compensation and expenses, both of which shall *constitute a lien on all the property of the employer; Provided,* that said compensation and expenses are hereby declared to be liens preferred over any other charge or lien for taxes or any other cause, with the exceptions of the mortgage credits, crop loans, and property taxes on the encumbered property for three years and the current year, burdening the property of the employer when it is attached to secure the said compensation and expenses; *Provided, further,* that the [Industrial] Commission shall grant the employer as well as the workman or employee in the case an opportunity to be heard and defend themselves, conforming as far as possible to the practice observed in the district courts; and *Provided, also,* that after the parties have been summoned by such means as the Commission may adopt, should they, or either of them, fail to appear for hearing and defense, it shall be understood that such party or parties waive their rights, and the Commission may decide the case in default, without further delay . . . "

The provisions of Section 15 are not applicable to awards of compensation by the Workmen's Relief Commission for an accident to a workman or employee in February, 1926, when the Act of 1925 was in force.

The Manager of the State Fund, who, under the Act of 1935, is *to determine* the compensation and expenses in a given case arising under that law and certify its *determination* to the Treasurer of Puerto Rico for collection, is not the Workmen's Relief Commission that *determined* the compensation and expenses called in question in the orders of April 24, 1928. On the contrary the Manager of that Fund is a new administrative officer created under Act No. 45 of 1935, and his duties are limited to compensation cases arising under it. Clearly Section 15 of the Act of 1935 did not authorize the Manager of the State Fund, or the Industrial Commission created by that Act, to redetermine the awards made by the Workmen's Relief Commission under the Act of 1925 and certify them to the Treasurer for collection by distraint, and the allegations of the bill refute their ever having attempted to do so. All they did was to recall the old orders of April 24, 1928, from the Attorney General and order their collection by the Treasurer by distraint. Nor does it make the awards of compensation by the Workmen's Relief Commission under the Act of 1925 preferred over other liens burdening the property of the employer. *Domenech* v. *Lee*, 66 Fed. (2d) 31, 34, 35. And the enforcement of its provisions with relation to the orders of the Relief Commission of April 24, 1926, would also deprive the employer (the plaintiff here) of the right given him under Section 7 of the Act of 1925 to plead in defense to the action there authorized that he was an insured employer and contest the question judicially.

The defendant, in the stipulation on submission of the case, in B(4) contends "that the proper, correct and legal procedure to collect the compensations awarded by the Workmen's Relief Commission is that specified in Section 25 of Act 85 of 1928." Section 25 of Act No. 85 of 1928 does not differ materially from the provisions of Section 15 of Act No. 45 of 1935, except that it may be

that it gives greater priority to the lien than Section 15 of the Act of 1935.

The provisions of the Act of 1925, in conflict with those of the Act of 1928, are repealed by Section 57 of the latter Act, subject to the saving clause in Section 48 thereof, providing: "The provisions of this act [1928] shall in no way affect pending litigation relative to workmen's compensation under previous laws", thereby leaving Section 7 of the Act of 1925 in effect for the collection of the orders of April 24, 1928. And Act No. 85 of 1928, is, in Section 51 of the Act of 1935, "expressly repealed, with the exception of the provisions of Sections 40 to 47, both inclusive, of this Act [1935], in regard to the decision and liquidation of cases pending under said Act", of 1928.

The provisions contained in Sections 40 to 47 relate to the liquidation of cases pending under the Act of 1928, with which the compensation orders of April 24, 1928, having nothing to do, for they originated and were imposed under the Act of 1925, before the Act of 1928 went into effect.

Furthermore Section 34 of the Act of 1935 contained a saving clause to the effect that "the provisions of this Act shall in no way affect pending litigations or claims relative to workmen's compensation under previous laws. The procedure in such litigations or claims, until their termination, shall be in accordance with the laws in force on the date of the accident."

The Supreme Court concluded that, when the Workmen's Relief Commission; under the Act of 1925, made the orders assessing the compensations in question and sent them to be collected by the Attorney General by suit in a court of competent jurisdiction, the litigation or prosecution of the claims was then terminated. But we think that when the claims were sent to the Attorney General to bring suit against the plaintiff, the prosecution of the claims had just started, not terminated, and that the Supreme Court was clearly wrong in holding that they were terminated.

The Industrial Commission created by the Act of 1925, was

without authority to recall the orders of the Workmen's Relief Commission of April 24, 1928, and direct their collection by distraint, thus depriving the plaintiff of its legal remedy of defense to the suit for their collection provided for in Section 7 of the Act of 1925, and the plaintiff is entitled to its remedy in equity, for otherwise it would be subject to irreparable damage through the distraint of its property by the Treasurer.

And this is so without regard to whether the finding of the Workmen's Relief Commission in its orders of April 25, 1928—that the plaintiff was an uninsured employer—was jurisdictional or not. We think, however, that the finding of the Workmen's Relief Commission of April 24, 1928, that the plaintiff was uninsured, was a condition precedent to its exercise of jurisdiction to make the compensation awards against the plaintiff, and that, being a jurisdictional fact, it is open to collateral attack in this proceeding. *Crowell* v. *Benson*, 285 U. S. 22, 54–62.

The judgment or decree of the Supreme Court of Puerto Rico is vacated and the case is remanded to that court with directions to remand the same to the District Court of San Juan, ordering the latter court to vacate its judgment or decree and issue an injunction restraining the Treasurer of Puerto Rico from collecting the compensation awards of April 24, 1928, by distraint upon the appellant's property. The appellant recovers costs in this court and in both of the courts below.

On the same date, to wit, March 25, 1939, the following Judgment was entered:

JUDGMENT.

March 25, 1939.

This cause came on to be heard January 17, 1939, upon the transcript of record of the Supreme Court of Puerto Rico, and was argued by counsel.

On consideration whereof, It is now, to wit, March 25, 1939, here ordered, adjudged and decreed as follows: The judgment or decree of the Supreme Court of Puerto Rico is vacated and the

case is remanded to that court with directions to remand the same to the District Court of San Juan, ordering the latter court to vacate its judgment or decree and issue an injunction restraining the Treasurer of Puerto Rico from collecting the compensation awards of April 24, 1928, by distraint upon the appellant's property. The appellant recovers costs in this court and in both of the courts below.

By the Court,

ARTHUR I. CHARRON, *Clerk.*

Thereafter, to wit, on April 25, 1939, mandate was stayed until further order of court.

CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the printed pages numbered 1 to 69, inclusive, hereto prefixed, contain and are a true copy of the record and all proceedings to and including April 28, 1939, in the cause in said court numbered and entitled,

No. 3380.

THE TEXAS COMPANY (P. R.), INC., PLAINTIFF, APPELLANT,

v.

RAFAEL SANCHO BONET, TREASURER, DEFENDANT, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-eighth day of April, A. D. 1939.

[SEAL] ARTHUR I. CHARRON, *Clerk.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler and Mr. Justice Stone took no part in the consideration and decision of this application.